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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL JOSEPH CAHILL, Defendant and Appellant.	H042694 (Santa Clara County Super. Ct. No. F1243871)

A jury convicted appellant Michael Joseph Cahill of 15 sexual assault crimes perpetrated against his granddaughters and of possession of child pornography. Cahill claims on appeal that the trial court improperly denied his request to represent himself at the sanity phase of his trial. He also contends that the trial court erroneously instructed the jury using CALCRIM No. 1193, which allowed the jury to consider child sexual abuse accommodation syndrome (CSAAS) evidence to determine the credibility of the complaining witnesses. In addition, Cahill challenges his sentence. He argues that the prison terms imposed on certain counts should have been stayed, that the trial court erred in imposing consecutive sentences, and that his defense counsel was prejudicially ineffective for failing to object to the consecutive sentences and to the total term imposed of 225 years to life in prison. We reject Cahill's claims and affirm the judgment.

I. FACTS AND PROCEDURAL BACKGROUND

A. *Procedural History*

In March 2013, the Santa Clara County District Attorney filed an information charging Cahill with 15 counts of sex crimes against two of his granddaughters, identified as Jane Doe #1 and Jane Doe #2, and one count of possession of child pornography. Counts 1 through 14 involved Jane Doe #1, count 15 involved Jane Doe #2, and count 16 was for child pornography.

Specifically, counts 1 through 4 alleged sexual penetration of and counts 5 through 8 alleged oral copulation with Jane Doe #1, a child 10 years of age or younger (Pen. Code, § 288.7, subd. (b)[1]) (hereafter § 288.7(b)). Counts 9 through 14 alleged a lewd or lascivious act on Jane Doe #1, a child under age 14 (§ 288, subd. (a)) (hereafter § 288(a)). Counts 9 through 14 each included a multiple-victim enhancement (§ 667.61, subds. (b) & (e)). The first 14 counts alleged that the crimes occurred "[o]n or about and between December 10, 2010 and August 19, 2012."

Count 15 alleged that, on or about and between January 13, 2008 and January 12, 2010, Cahill committed a lewd or lascivious act on Jane Doe #2, a child under 14 years old (§ 288(a)). This count also included a multiple-victim enhancement (§ 667.61, subds. (b) & (e)).

Count 16 alleged that, on or about and between January 13, 2008 and August 30, 2012, Cahill possessed child pornography (§ 311.11, subd. (a)).

Cahill pleaded not guilty by reason of insanity.

Throughout the course of the prosecution, Cahill filed 12 written *Marsden*[2] motions and made three additional oral *Marsden* requests challenging three different

[1] Unspecified statutory references are to the Penal Code.
[2] *People v. Marsden* (1970) 2 Cal.3d 118.

defense attorneys.[3] The trial court held eight *Marsden* hearings. Cahill also made two requests for self-representation under *Faretta*.[4] Cahill's complaints regarding his attorneys focused primarily on his beliefs about defense counsels' preparation for trial and the presentation of an insanity defense. In particular, Cahill sought to present to the jury a theory that he had rendered himself insane by repeatedly exposing himself to child pornography thereby conditioning himself psychologically to commit crimes against children—using in part what Cahill described as a "Skinner box."[5] The trial court denied all of Cahill's *Marsden* and *Faretta* motions.

In April 2013, the trial court declared a doubt about Cahill's mental competence, suspended the proceedings, and appointed two mental health experts to evaluate him. In July 2013, the trial court found Cahill competent to proceed.

On March 2, 2015, the trial court called the case for trial. Cahill made his first *Faretta* request, which the trial court denied. The trial court found: "First and foremost, I believe [the *Faretta* motion is] not sincere. I believe that his lengthy and well documented disagreements with each and all of his trial attorneys, the previous prosecutors, previous judges, and me, indicate that he's frustrated but doesn't really want to represent himself. [¶] Secondly, it's not timely. Although the defendant, in response to his attorney's questions, indicated that he might be prepared to go forward immediately, any reasonable interpretation of the 20 minutes or so of what he's talked about here indicates that it would require [a] lengthy continuance to obtain experts in sciences that may not exist. Just recently he made a comment about just give him 30 days to conduct his negotiations directly with his attorney. So I don't think it's timely in a trial that's

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[3] In his briefs, Cahill states that he filed 11 written *Marsden* motions. By this court's count, Cahill filed 12 such motions.

[4] *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

[5] "Skinner" is a refence to psychologist B.F. Skinner, and a "Skinner box" is an "operant conditioning chamber" Dr. Skinner created to conduct research with animals. (See <https://en.wikipedia.org/wiki/Operant_conditioning_chamber> (as of Mar. 28, 2019), archived at <https://perma.cc/S57G-HKGF>.)

proceeding forward. [¶] Third, I do not believe that Mr. Cahill has the capacity to conform his behavior in court to that required to successfully serve as an advocate for himself. He raises his voice, he gets excited, he reached out to inappropriately touch his attorney, he's moved around the courtroom when he's been told not to. And frankly, I am concerned that it would be impossible for him to represent himself should things not go well. And he's already indicated that he expects things not to go well and I'm afraid that would be a self-fulfilling prophecy. [¶] As a fourth ground, I am concerned that under any authority that *Indiana v. Edwards* [*sic*] that he is not sufficiently competent to represent himself. Whether he is deliberately trying to introduce mental health issues into the case, whether he suffers from mental illness is difficult for me to tell. But based on his performance today and on previous days and comments about a conspiracy theory involving all of his attorneys and prosecutors and doctors, would transform the trial not to—for truth, not to be a situation where the DA would be held to prove their case beyond a reasonable doubt, but into some sort of circus involving noncanonical sciences and lengthy speeches by the defendant that, frankly, make little or no sense. [¶] On each and all four of those grounds, therefore, his request to represent himself is denied. If only one of those grounds were present, I would have denied his right to represent himself."

The trial court also refused to hold a hearing on a *Marsden* motion, finding: "We have had, by my count, nine or more *Marsden* motions so far in this trial, including at least three—well, at least three against each of his two previous attorneys and I think two against [current defense counsel]. But sometimes it's difficult for me to count. And at this point, there is nothing in his papers that he has submitted and the letters that he has submitted that creates any suggestion that there is any new disagreement and nothing in his lengthy statement just now that provides any new information. In other words, there are no new misconduct allegations for which to hold a *Marsden*, so I am not holding a *Marsden* at this point."

Cahill's trial began on March 6, 2015. On March 13, 2015, defense counsel declared a doubt about Cahill's mental competence, and the trial court suspended the proceedings. Defense counsel's doubt was based in part on the opinion of a psychologist who had examined Cahill and found that Cahill had a "delusional disorder" that prevented him from assisting counsel. On May 4, 2015, the trial court found Cahill competent and the trial resumed. On May 8, 2015, Cahill made another *Marsden* motion, which the trial court denied. On May 11, 2015, the trial court denied Cahill's request for a *Marsden* hearing before a different judge. Later that day, the jury began deliberating.

The next day, the jury returned a guilty verdict on all counts and found the multiple-victim allegations to be true. Thereafter, defense counsel stated that he had no evidence to present in support of Cahill's plea of not guilty by reason of insanity. Cahill then made his second *Faretta* motion, which the trial court denied.[6] Because the defense had no evidence to present on Cahill's alleged insanity, the trial court issued a directed verdict that Cahill was sane at the time he committed the offenses.

The trial court sentenced Cahill to consecutive terms of 15 years to life for each count involving Jane Doe #1 and Jane Doe #2 (counts 1-15), and to a concurrent middle term of two years for the possession of child pornography (count 16), for a total of 225 years to life. The trial court also imposed various fines and fees.

B. Trial Evidence

Cahill has two daughters, Daughter #1 and Daughter #2.[7] Daughter #1 has a daughter, Jane Doe #1, who was born in December 2006. Daughter #2 has a daughter, Jane Doe #2, who was born in January 1998.

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[6] This motion and order form the basis of one of Cahill's principal claims on appeal; we discuss them in more detail below.

[7] Cahill's adult daughters are the mothers of the child victims in this case. We refer to Cahill's daughters by these phrases to protect their identities given the facts of this case. (See Cal. Rules of Court, rule 8.90(b)(11).) Because the adult daughters' first names begin with the same first letter, we use these phrases instead of their initials.

In 2009, Cahill, who was then 69 years old, lived in an apartment complex for senior citizens close to Daughter #2's home. Because Jane Doe #2 was struggling in school, Daughter #2 had Cahill tutor Jane Doe #2 at his apartment. Cahill tutored Jane Doe #2 during the summer of 2009 and about twice per week during part of the 2009-2010 school year. Eventually, Jane Doe #2 "start[ed] to get very agitated about going to see [Cahill]," and would want to leave his apartment earlier than planned. Jane Doe #2 cried and became very emotional about going to Cahill's apartment. Jane Doe #2 told her mother, Daughter #2, that Cahill said mean things to her. Cahill told Daughter #2 that Jane Doe #2 was a "bad kid." Daughter #2 and her spouse decided to end the tutoring around Easter of 2010.

In 2011, after Daughter #1 was diagnosed with breast cancer, Cahill stayed at her house for days or weeks at a time to help watch her children, including Jane Doe #1. In about March 2012, Daughter #1 left her children with Cahill at her home. When Daughter #1 returned around 10:00 or 10:30 p.m., she found Jane Doe #1, who was then five years old, still awake even though she normally went to bed by about 7:30 p.m. Jane Doe #1 told her mother that Cahill had touched her private parts. Daughter #1 confronted Cahill, and he denied touching Jane Doe #1. Cahill told Daughter #1 that Jane Doe #1 had had an "owie" and he put some antiseptic lotion that he had in his backpack on it. Daughter #1 then spoke to Jane Doe #1 again and Jane Doe #1 retracted her statement and said Cahill had not touched her private parts.

Approximately four months later, in early August 2012, Daughter #1 and Jane Doe #1 were getting ready to drive to Cahill's apartment. While Daughter #1 was telling Jane Doe #1 what they had planned for the day, Jane Doe #1 said that Cahill put his mouth on her vagina. Daughter #1 replied "no, Grandpa didn't do that." Jane Doe #1 then "freaked out," ran and grabbed Daughter #1 hard, and yelled, " 'He did, he did, he really did. He put his mouth on my vagina.' " Later that day, Daughter #1 called her sister, Daughter #2, told her what Jane Doe #1 said, and asked if Cahill had ever molested

Daughter #2 or her daughters. Daughter #1 also called Cahill, told him what Jane Doe #1 said, and told him that she was never going to speak to him again. A few days after Jane Doe #1 disclosed the molestation, Daughter #1 reported Cahill to the police.

After learning about Jane Doe #1's disclosure, Daughter #2 and her husband talked to Jane Doe #2. They told Jane Doe #2 something happened to Jane Doe #1 but did not provide any details. Jane Doe #2 first said she did not remember anything and that she "locked everything up in a box in [her] head." Jane Doe #2 expressed concern that she might have "misunderstood what happened" to her and "[didn't] want to get anyone in trouble." Jane Doe #2 eventually provided information about Cahill's sexual abuse. The next day, Daughter #2 reported the matter to the police.

Jane Doe #1 was interviewed at the Santa Clara County Children's Interview Center. During the interview, Jane Doe #1 said that Cahill "likes privates" and that he put his mouth on privates and "drinks it." Cahill put his mouth on Jane Doe #1's "private" "more than one time" and he first put his mouth on her privates "a long time ago" at her house on her bed.[8] Cahill told Jane Doe #1 never to tell anyone about his actions. Cahill also put his mouth on Jane Doe #1's "butt." He washed her butt outside and "inside the hole" with soap, dried it, and then put his mouth there. Cahill did this more than once. Jane Doe #1 explained that Cahill had some stuff called "feel good" that came in different colors and "super good" that was fruit or chocolate flavored. Cahill put the "feel good" stuff and his mouth on Jane Doe #1's private and told her "I'm drinking the love." Jane Doe #1 said Cahill put his mouth "outside and inside" her private. Jane Doe #1 once was in her bed under the covers and saw Cahill naked and felt his penis against her body; it was slimy.

[8] Jane Doe #1 described her "private" as being in front, i.e., her genitalia—in contrast to her "butt."

At trial, Jane Doe #1 testified that Cahill touched her on "private places" when she was four and five years old.[9] Cahill licked and sucked on Jane Doe #1's vagina and butt. He touched Jane Doe #1's vagina with his mouth more than five times; it happened during the day and at night in her home's first-floor living room and bathroom.

Cahill often said he was "sucking the love out" of Jane Doe #1 before he put his mouth on her vagina. Cahill cleaned her butt with baby wipes, soap, and water before putting his mouth there. He put his mouth on Jane Doe #1's butt about five times. Cahill made Jane Doe #1 put her mouth on his penis about three times. When he put his mouth on Jane Doe #1's vagina, Cahill used his fingers to pull apart her vagina. He also used his hands to pull apart her butt cheeks when putting his mouth there. Jane Doe #1 said Cahill touched her vagina with his fingers and put his fingers inside her vagina at least two times. In addition, Jane Doe #1 said Cahill put his fingers in her butt about five times. After he touched Jane Doe #1, Cahill told her not to tell anyone and he gave her candy. She remained silent at first because her mother and father told her to listen to Cahill. Jane Doe #1 eventually told her mom about Cahill's molestation because she was uncomfortable, she was tired of Cahill telling her not to tell people, and she knew what he was doing was wrong.

Jane Doe #2 testified that Cahill molested her at his apartment during the period he was tutoring her in 2009 and 2010. Once, Cahill told Jane Doe #2 that she could take a nap and said she would probably be most comfortable if she napped in his recliner. After she sat next to Cahill, he kept moving her body and hand toward his penis and he moved his pelvic area in a "wave." Jane Doe #2 felt Cahill's penis on her behind. On another occasion, as Jane Doe #2 sat at a desk in Cahill's bedroom, he rubbed his erect penis on her arm in a circular motion through his robe for more than 30 seconds. Jane Doe #2 got up from the desk, moved away from Cahill, and sat on the bed. Cahill followed her, sat

[9] Jane Doe #1 described her "privates" as her "butt and vagina."

down next to her, massaged her shoulders, and told her that he could put her to sleep if he pinched her hard. Jane Doe #2 was scared and left the apartment until her mother arrived.

Cahill also made sexual comments to Jane Doe #2 including telling her she looked like the "senoritas" he had sex with in Mexico. After Cahill said mean or inappropriate things, he gave Jane Doe #2 candy or money to buy candy. Jane Doe #2 did not tell anyone about what Cahill was doing because she was embarrassed, afraid she would get in trouble, and scared no one would believe her. Jane Doe #2 was upset and cried after her visits to Cahill's apartment. She told her parents she did not want to go back but did not tell them why.

When the police searched Cahill's apartment, they found Jane Doe #1's Disney princess underwear in Cahill's bedroom, sex toys, flavored lubricants, candy, and computers, hard drives, and a cell phone containing child pornography—including over 2,000 photographs and hundreds of videos.

Psychologist Michael Grogan testified as an expert on CSAAS. Dr. Grogan described and explained the five categories of CSAAS: secrecy; helplessness; entrapment and accommodation; delayed conflicted and unconvincing disclosure; and retraction or recantation. Dr. Grogan said the syndrome is not diagnostic but an educational tool for understanding the dynamics that can occur with a sexually abused child. Dr. Grogan opined that sexually abused children may exhibit some or none of the syndrome's described behaviors and the syndrome is not meant as proof that an allegation of abuse is true. Dr. Grogan did not interview any witnesses and did not know the specific facts of the case.

The defense did not present evidence during the guilt or sanity phases of the trial.

II. DISCUSSION

Cahill raises four claims on appeal. Cahill argues that the trial court erred when it denied his second *Faretta* motion, made after the jury found him guilty. He also

contends that the trial court prejudicially erred by instructing the jury about the CSAAS testimony with CALCRIM No. 1193. In addition, Cahill challenges his sentence in two ways. He claims that the sentences imposed on counts 9, 10, 11, and 12 should have been stayed under section 654. He also claims that the trial court abused its discretion and violated the Eighth Amendment by imposing consecutive sentences and that his defense counsel was prejudicially ineffective for failing to object to the sentence on the grounds raised in this appeal.

A. Self-Representation Request

1. Facts and Procedural History

As described above, Cahill made his first *Faretta* motion on the day the trial court initially called the case for trial. The trial court considered and denied the motion for the reasons set forth above. On appeal, Cahill does not challenge either the trial court's denial of his first *Faretta* motion or the trial court's denial of his numerous *Marsden* motions. Cahill also does not question the trial court's conclusion that he was competent to stand trial. Instead, Cahill contends that the trial court's denial of the second *Faretta* motion was "legally flawed," "unsupported by the record," and "no other valid basis" supports the trial court's conclusion. As we will explain, we conclude that Cahill's second *Faretta* motion was untimely, and the trial court did not abuse its discretion in denying it.

Cahill made his second *Faretta* motion after the jury returned its guilty verdicts and after defense counsel announced that he had no evidence to support Cahill's insanity plea. Cahill told the trial court that "some new things have happened here that make my fear of [defense counsel] so high now that it's really impossible for me to deal with him under any circumstances." Cahill accused defense counsel of "very clear tampering" related to Dr. David Berke (one of the psychologists who had assessed Cahill's sanity and competency to stand trial). Cahill claimed that Dr. Berke acknowledged awareness of "criminal wrongdoing" by defense counsel. Cahill asked the trial court to "entertain

another *Faretta* motion because not only have I been stultified by these dealings with the [*sic*] Dr. [Berke]—and by the way, I tried to disclose these dealings during the last *Marsden* hearing, and the bench cut me off."

Cahill sought to represent himself during the sanity phase because (in Cahill's view) defense counsel would not consider Cahill's contention that he had rendered himself insane through his use of a psychological conditioning technique he referred to as the "Skinner box."[10] Cahill stated that he used the "Skinner box" (as well as LSD and PCP) to condition himself to commit sexual offenses against children. Cahill complained that he had given defense counsel "up to 100 pages of scientific documentation" about Cahill's experiences during the period of the crimes, but defense counsel consistently refused to discuss it with Cahill, "refused to get the software that [Cahill] developed that has to do with the sentia [*sic*] emergency system, an extraordinary noncanonical system . . . unknown to published science," "refused to get [Cahill] the extremely noncanonical pornographic drivers that were used in that system," "refused to look at the Skinner box and analyze it," "refused to discuss with [Cahill] the fact that his Skinner box incorporated suicidal ideation reduction," "refused to look into the science himself," and refused to discuss the "tampering" defense counsel engaged in with regard to Dr. Berke.

Cahill accused both the trial court and his counsel of misconduct. Cahill stated that defense counsel had told him the day before that "the bench tampered with Dr. [Berke]." Cahill claimed "there should be no question as to why [he did] not wish to testify with a monster like [defense counsel]" representing him who would allow the prosecutor to "rip [Cahill] to shreds" on cross-examination. Cahill told the trial court that that it would take him "very little time to pull the case together" and mentioned his prior psychological evaluation by Dr. Leonard Donk, who Cahill believed understood his

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[10] See footnote 5, *ante*.

experiences. Cahill concluded, "So if the bench will entertain a *Faretta* Motion, I would like to make one."

The trial court denied the motion, stating, "The defendant's *Faretta* motion is denied for several reasons. First off, I have reviewed, I think during the course of this case, something [o]n the order of six separate psychological and psychiatric reports on Mr. Cahill. And I find that although he is legally competent to represent himself, he is not able—I'm sorry—he's competent to stand trial. He's not competent, I believe, to represent himself for several reasons: Dr. [Berke] believes he's delusional concerning his defense, Dr. Echeandia noted persecutory thinking. Dr. [Donk], of course, in his 23-page report indicated that there is a Narcissistic Personality Disorder, which affects his ability, I believe, to effectively represent himself in court. And so I think he has a personality disorder or other diagnosable mental defect that makes it unwise and would, in fact, deprive him [of] his due process rights should he represent himself. But even if that were not the case, the fact that I have found his attempts to manipulate the process, the fact that he voluntarily absents himself from court, that his marked inability to focus on the issues at hand and respond cogently and concisely would also make it unwise to represent himself even if he didn't have a diagnosed or diagnosable mental disorder. [¶] Accordingly, the *Faretta* motion is denied, and [defense counsel] will continue to represent Mr. Cahill through the conclusion of this trial. Mr. Cahill may choose to cooperate or not with his attorney. That's entirely up to him."

Cahill challenges the trial court's reasons for denying the *Faretta* motion as flawed, unsupported, and otherwise invalid. Cahill specifically disputes the trial court's finding that he was incompetent to represent himself and that he had attempted to manipulate the process, voluntarily absented himself, and was unable to focus and respond appropriately. Cahill also contends that his *Faretta* request should be considered unequivocal and timely, and even if it was untimely, the trial court abused its discretion in denying the motion.

2. Legal Analysis

"[T]he timeliness of one's assertion of *Faretta* rights is critical."[11] (*People v. Halvorsen* (2007) 42 Cal.4th 379, 433.) Our review of Cahill's claim depends on the timeliness of his *Faretta* request. We review the record de novo to determine whether the request was timely made, regardless of whether the trial court denied the motion as untimely. (*Id.* at p. 433, fn. 15, citing *People v. Dent* (2003) 30 Cal.4th 213, 218, 222.) If we conclude the *Faretta* request was untimely, we determine whether the trial court abused its discretion in denying the request. (*People v. Hardy* (1992) 2 Cal.4th 86, 194 (*Hardy*); *People v. Windham* (1977) 19 Cal.3d 121, 128 (*Windham*).)

"[A] defendant . . . has a constitutional right to proceed *without* counsel when he voluntarily and intelligently elects to do so." (*Faretta*, *supra*, 422 U.S. at p. 807.) An erroneous denial of a proper *Faretta* request is reversible per se. (*Hardy*, *supra*, 2 Cal.4th at p. 98.) However, "in order to invoke the constitutionally mandated unconditional right of self-representation a defendant in a criminal trial should make an unequivocal assertion of that right within a reasonable time prior to the commencement of trial." (*Windham*, *supra*, 19 Cal.3d at pp. 127-128; see *People v. Valdez* (2004) 32 Cal.4th 73, 97–98.) The timeliness requirement "serves to prevent a defendant from misusing the motion to delay unjustifiably the trial or to obstruct the orderly administration of justice." (*People v. Horton* (1995) 11 Cal.4th 1068, 1110.)

We are not persuaded by Cahill's argument that his *Faretta* request was timely. As Cahill acknowledges, the sanity phase is not a separate proceeding; it is part of the trial. (*People v. Villarreal* (1985) 167 Cal.App.3d 450, 458; *People v. Foster* (1934) 3 Cal.App.2d 35, 39–40.) Making a *Faretta* request between the guilt and sanity phases of a trial is analogous to making a *Faretta* request between the guilt and penalty phases of a capital trial. Each of these phases is part of a unitary trial, and our Supreme Court has

[11] In *Faretta* itself, the defendant's request to represent himself was made "weeks before trial." (*Faretta*, *supra*, 422 U.S. at p. 835.)

held that a *Faretta* request made between the guilt phase and penalty phase is untimely. (*Hardy*, *supra*, 2 Cal.4th at p. 194; see also *People v. Givan* (1992) 4 Cal.App.4th 1107, 1113–1115 [*Faretta* motion is untimely when made after a guilty verdict but prior to trial on prior conviction allegations].) Cahill's reliance on *People v. Miller* (2007) 153 Cal.App.4th 1015 is inapposite, because the defendant in *Miller* made his *Faretta* request after his trial concluded but before his sentencing hearing, which (unlike the sanity phase) is considered a separate "posttrial" proceeding. (*Id*. at pp. 1023–1024.) For these reasons, we conclude that Cahill's *Faretta* request was made during his trial and thus was not timely.[12]

Because Cahill's *Faretta* motion was untimely, whether to grant the motion rested within the discretion of the trial court. (*Hardy*, *supra*, 2 Cal.4th at p. 195; *Windham*, *supra*, 19 Cal.3d at p. 128.) In assessing an untimely *Faretta* request, the trial court may consider a number of factors, such as "the potential for delay and disruption . . . the quality of counsel's representation to that point, the reasons the defendant gives for the request, and the defendant's proclivity for substituting counsel." (*People v. Buenrostro* (2018) 6 Cal.5th 367, 426 (*Buenrostro*).)

A trial court's exercise of discretion when denying a self-representation request " 'will not be disturbed in the absence of a strong showing of clear abuse.' " (*People v. Welch* (1999) 20 Cal.4th 701, 735.) "To establish an abuse of discretion, defendants must demonstrate that the trial court's decision was so erroneous that it 'falls outside the bounds of reason.' [Citations.] A merely debatable ruling cannot be deemed an abuse of discretion. [Citations.] An abuse of discretion will be 'established by "a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner

[12] We need not reach the argument advanced by the Attorney General that Cahill's *Faretta* request was equivocal and therefore properly denied on that basis. We assume arguendo that Cahill's request was unequivocal.

that resulted in a manifest miscarriage of justice." ' " (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 390.)

Here, considering the trial court's stated reasons and the attendant support in the record, we conclude that the court did not abuse its discretion when it denied Cahill's *Faretta* request. The source of Cahill's dissatisfaction with his defense counsel was counsel's inability to develop evidence supporting Cahill's insanity defense, despite having Cahill evaluated by numerous mental health experts and conducting further investigation.

The trial court found that Cahill was not competent to represent himself based on expert opinions about Cahill's delusional and persecutory thought processes. The reported opinions of Dr. Berke, who observed Cahill to be "wildly delusional" and believed he was incompetent to stand trial, and Dr. David Echeandia, who opined that Cahill's statements and behavior suggested possible persecutory thinking, support the trial court's conclusion. The finding that Cahill suffered a narcissistic personality disorder or other diagnosable mental defect also was supported by expert opinions. Specifically, Dr. Martin Williams concluded that Cahill was competent to stand trial but suffered from a narcissistic personality disorder. Dr. Donk also found Cahill to be competent to stand trial but diagnosed him with other personality disorders, mixed with histrionic traits and narcissistic features, and generalized anxiety disorder.[13]

A defendant who has been found competent to stand trial may nevertheless be found incompetent to waive counsel if "the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense

[13] The functional consequences of generalized anxiety disorder include impairment of "the individual's capacity to do things quickly and efficiently, . . . [and] the associated symptoms of muscle tension and feeling keyed up or on edge, tiredness, difficulty concentrating, and disturbed sleep contribute to the impairment." (American Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) p. 225.)

without the help of counsel." (*People v. Johnson* (2012) 53 Cal.4th 519, 530 (*Johnson*); see *Indiana v. Edwards* (2008) 554 U.S. 164, 177–178 (*Edwards*).) We reject Cahill's contention that the trial court lacked evidence of mental illness sufficient to support a denial of his *Faretta* request under *Johnson*.[14] In our view, the expert opinions here amount to substantial evidence supporting the trial court's determination that Cahill's ability to represent himself was impaired by his mental illness. (See *People v. Gardner* (2014) 231 Cal.App.4th 945, 959–960; see also *Edwards*, *supra*, at pp. 177-178.)

Even if Cahill's diagnosed mental illness alone was not severe enough to properly deny his request for self-representation, the trial court did not abuse its discretion in denying Cahill's second *Faretta* request based on the other grounds it articulated. The trial court noted Cahill's previous "attempts to manipulate the process." Cahill had made over a dozen written and oral *Marsden* motions prior to his second *Faretta* request. The trial court denied all of the *Marsden* motions, and Cahill does not challenge those rulings on appeal. The trial court also raised "the fact that [Cahill] voluntarily absents himself from court." Cahill voluntarily absented himself from trial proceedings on three occasions—during portions of jury selection, opening statements, and the testimony of Daughter #2 and Jane Doe #2—because of professed chronic back pain and illness.

Based on Cahill's prior conduct, the trial court had reason to believe that granting Cahill's *Faretta* request would result in a delay of the proceedings. (See *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1516 ["The court did not act beyond the 'bounds of reason' in concluding that Defendant's repeated refusal to come to court . . . would seriously threaten the core integrity of the trial."]; *People v. Howze* (2001) 85 Cal.App.4th 1380, 1398.) In addition, we note that the defense Cahill sought to advance in the sanity phase—that he was insane due to his prior self-imposed psychological conditioning and one of the psychologists who had examined him would provide

[14] The determination of competence for self-representation is reviewed for an abuse of discretion. (*Johnson*, *supra*, 53 Cal.4th at pp. 531-532.)

favorable testimony (according to Cahill's understanding)—would by its nature involve delay for Cahill to secure the necessary expert witnesses. (See *Buenrostro, supra,* 6 Cal.5th at p. 427.)

The trial court also relied on Cahill's "marked inability to focus on the issues at hand and respond cogently and concisely." The *Edwards* court acknowledged that " '[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant.' " (*Edwards, supra,* 554 U.S. at p. 176 [quoting an amicus curiae brief of the American Psychiatric Association].) Based on the trial court's observations and interactions with Cahill throughout the case, the court had ample basis to conclude that Cahill would not be able to effectively participate in the proceedings without disruption or delay. (See *People v. Bradford* (2010) 187 Cal.App.4th 1345, 1354.) Indeed, the trial court had already denied Cahill's first *Faretta* request in part on this ground.

Moreover, even if we assume for argument's sake that the trial court improperly denied Cahill's untimely *Faretta* request, he cannot establish a reasonable probability of a more favorable result regarding his sanity under *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Rogers* (1995) 37 Cal.App.4th 1053, 1058.) Defense counsel stated he had "no medical evidence, . . . no doctors to support the NGI." In addition, Jane Doe #1 testified that Cahill repeatedly told her not to disclose his sexual assaults and gave her candy. This evidence shows that Cahill was capable of understanding the nature and quality of his actions and knew his actions were wrong. (§ 25; CALCRIM No. 3450.) Plainly, it is not reasonably probable that the jury would have found Cahill insane if he represented himself and presented his proposed evidence regarding his "extraordinary noncanonical [Skinner box] system" with "extremely noncanonical pornographic drivers" that he used to condition himself to sexually molest children.

For these reasons, we conclude that the trial court clearly acted within the bounds of its discretion and protected the core integrity of Cahill's trial when it denied his untimely *Faretta* request.

B. CALCRIM No. 1193

Cahill argues that CALCRIM No. 1193 permits the jury to consider CSAAS testimony as evidence of his guilt and reduces the prosecution's burden of proof.[15]

When reviewing a purportedly erroneous instruction, "the relevant inquiry is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violated the Constitution. In addition, we must assume that jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given." (*People v. Covarrubias* (2016) 1 Cal.5th 838, 915, internal citations and punctuation omitted.) When conducting our inquiry, we examine the challenged jury instruction in the context of all instructions, not in isolation. (*People v. Richardson* (2008) 43 Cal.4th 959, 1028.)

The trial court instructed the jury with CALCRIM No. 1193 as follows: "You have heard testimony from Dr. Michael Grogan regarding Child Sexual Abuse Accommodation Syndrome. [¶] Dr. Grogan's testimony about Child Sexual Abuse Accommodation Syndrome is not evidence that the defendant committed any of the crimes charged against him. [¶] You may consider this evidence only in deciding whether or not Jane Doe No. 1 and Jane Doe No. 2's conduct was not inconsistent with the conduct of someone who has been molested and in evaluating the believability of their testimony."

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[15] Although Cahill did not object to or request a modification of CALCRIM No. 1193 at trial, section 1259 allows appellate review of instructional error claims that affect the defendant's substantial rights. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1074, fn. 7.) Accordingly, we consider the merits of Cahill's challenge to the instruction.

Cahill argues that the problem with the instruction is that it permits the jury to use the CSAAS testimony to evaluate the believability of the victims' testimony but does not clearly state that it cannot be used to decide that their molestation claims are true. Cahill asserts that this omission allowed the jury to use the CSAAS testimony as evidence that he was guilty. We are not persuaded by Cahill's argument.

The instruction told the jury that the expert testimony "is not evidence that the defendant committed any of the crimes charged against him" and could be used only for the stated limited purposes. Moreover, Dr. Grogan testified that he did not evaluate the victims and that the syndrome was neither a diagnostic tool nor meant to prove that an allegation of abuse is true. Although the assessment of an alleged sexual abuse victim's "believability" may assist the jury in determining whether to credit the victim's testimony that the abuse occurred, the same can be said of any evidence that is admitted as relevant to a witness's credibility. As CSAAS testimony can properly be used to determine whether a victim's conduct was not inconsistent with that of a person who has been molested, it may properly be used to evaluate a victim's credibility. (See *People v. Gonzales* (2017) 16 Cal.App.5th 494, 503–504.) It is not reasonably likely that the jurors concluded from the instruction that they could properly use the expert testimony as affirmative proof supporting the truth of the charges or to lessen the prosecution's burden to prove Cahill's guilt beyond a reasonable doubt. We conclude that the trial court properly instructed the jury with CALCRIM No. 1193, and Cahill's right to due process was not violated.

C. Challenges to the Sentence

1. Section 654 and Double Punishment

Cahill claims that the lewd touching of Jane Doe #1's vagina and buttocks, as charged in counts 9 through 12 under section 288(a), was incidental to and a means of facilitating the oral copulation of her vagina and anus, as charged in counts 5 through 8 under section 288.7(b). Specifically, Cahill argues that the testimony and prosecutor's

argument demonstrate that the "prosecutor was relying on [Cahill's] spreading Doe #1's butt checks and vagina, the first and last time, to support the lewd act counts." Hence, he maintains the 15 years to life sentences for counts 9 through 12 should be stayed under section 654. The Attorney General counters that "[i]n touching or rubbing [Jane Doe #1's] vagina and buttocks [Cahill] had separate intents, even if his overriding and broad objective was to orally copulate her vagina and anus." In addition, the Attorney General asserts that the touching or rubbing "were neither necessary nor incidental to the oral copulation . . . [and] provided [Cahill] independent and additional sexual gratification, warranting additional punishment."

Section 654, subdivision (a) provides, "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." "Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct." (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) "The purpose of section 654 is to ensure that a defendant's punishment is commensurate with his culpability and that he is not punished more than once for what is essentially one criminal act." (*People v. Hicks* (2017) 17 Cal.App.5th 496, 514.)

"Whether a defendant may be subjected to multiple punishment under section 654 requires a two-step inquiry, because the statutory reference to an 'act or omission' may include not only a discrete physical act but also a course of conduct encompassing several acts pursued with a single objective. [Citations.] We first consider if the different crimes were completed by a 'single physical act.' [Citation.] If so, the defendant may not be punished more than once for that act. Only if we conclude that the case involves more than a single act—i.e., a course of conduct—do we then consider whether that course of conduct reflects a single ' "intent and objective" ' or multiple intents and objectives. [Citations.] At step one, courts examine the facts of the case to determine whether

multiple convictions are based upon a single physical act. [Citation.] When those facts are undisputed . . . the application of section 654 raises a question of law we review de novo." (*People v. Corpening* (2016) 2 Cal.5th 307, 311–312.)

At step two, whether crimes arise from an indivisible course of conduct turns on the perpetrator's intent and objective, not the temporal proximity of the offenses. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) "If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19, overruled in part on another ground in *People v. Correa* (2012) 54 Cal.4th 331, 341.) Whether a defendant harbored a single intent—and thus a single objective—is a factual question; the applicability of section 654 to settled facts is a question of law. (*Harrison, supra*, at p. 335.)

If a trial court erroneously fails to stay the execution of a sentence pursuant to section 654, the trial court has acted in excess of its jurisdiction, and a reviewing court must correct the error on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17 (*Scott*).) A defendant's "failure . . . to object on this basis in the trial court does not forfeit the issue." (*People v. McCoy* (2012) 208 Cal.App.4th 1333, 1338.)

Here, defense counsel argued that the sentences on counts 1, 2, 3, and 4 for digital penetration under section 288.7(b)—when considered against counts 9, 10, 11, and 12—should be stayed under section 654. The trial court ruled that counts 1 through 4 were separate crimes from counts 9 through 12 under section 654 and stated its intention to impose consecutive sentences on Cahill for "separate crimes on separate occasions." Although the trial court did not make an express finding regarding the applicability of section 654 to counts 5 through 8, we affirm a trial court's implicit determination that section 654 does not apply if substantial evidence supports that conclusion. (*People v. Mejia* (2017) 9 Cal.App.5th 1036, 1045; *People v. Akins* (1997) 56 Cal.App.4th 331, 339.) We view the evidence in the light most favorable to the judgment and presume the

existence of every fact the trial court could reasonably have determined from the evidence. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Regarding the step-one inquiry, here different physical acts—i.e., oral copulation and touching with hands—satisfied the actus reus requirements of counts 5 through 8 and 9 through 12, respectively. Because the crimes were not completed by a singular act, we next consider whether Cahill's course of conduct reflects multiple intents and objectives.

As described above, the gravamen of Cahill's claim with respect to section 654 is that his touching of Jane Doe #1's vagina and buttocks was incidental to and a means of facilitating the oral copulation of her vagina and anus. We disagree and conclude that substantial evidence supports a finding that Cahill had separate intents and objectives for the touchings and the oral copulations.

"[C]ourts no longer assume that fondling offenses are 'incidental' to other sex crimes within the meaning of section 654 . . . . The newer cases tend to focus on evidence showing that the defendant independently sought sexual gratification each time he committed an unlawful act." (*Scott*, *supra*, 9 Cal.4th at pp. 347-348, fn. 9.) The evidence here shows that Cahill sought independent sexual gratification in touching and in orally copulating Jane Doe #1.

Specifically, the evidence elicited at trial showed that Cahill's molestation of Jane Doe #1 involved the objective (separate from the oral copulation) of rubbing flavored gel on her vagina and spreading of her vagina and buttocks—the touchings underlying counts 9–12. A tongue does not physically require lubrication for insertion into a part of the body, and a flavored gel is not necessary for contact between a mouth and vagina or anus. The evidence elicited at trial also highlights the independent importance (and, inferentially, a sexual separate objective) of Cahill's use of fruit- and chocolate-flavored gels with his young granddaughter. Jane Doe #1 explained that Cahill had some stuff called "feel good" that came in different colors and "super good" that was fruit or chocolate flavored. He brought his flavored "feel good" and "super good" lotions to his

daughter's home when babysitting her children. When searching Cahill's bedroom, police found flavored lubricants and Jane Doe #1's Disney princess underwear. As a matter of common sense, it was not necessary for Cahill to physically spread five-year-old Jane Doe #1's vagina and buttocks with his fingers in order to orally copulate her vagina and anus.

Substantial evidence supports the trial court's implicit factual finding that Cahill's spreading actions and touching of Jane Doe #1's vagina and buttocks, including rubbing fruit- and chocolate-flavored gel on her, sprang from an objective and intent to arouse or gratify his sexual desires, in that he was distinctly trying to augment and enhance his experience, separate from his intent and objective in orally copulating her. The touching therefore was not merely incidental to or facilitative of the commission of the oral copulation. (Cf. *People v. Madera* (1991) 231 Cal.App.3d 845, 855 [section 654 does not apply to sexual misconduct that is " 'preparatory' " in the general sense that it is designed to sexually arouse the perpetrator or the victim]; *People v. Greer* (1947) 30 Cal.2d 589, 604 [holding the removal of underwear to commit a rape constitutes incidental conduct under section 654 and thus cannot be separately punished].)

For these reasons, we conclude that there was substantial evidence upon which the trial court could properly impose unstayed sentences under section 654 for counts 9, 10, 11, and 12.

2. Consecutive Sentencing

Cahill asserts that there was no evidence to support the trial court's determination that Cahill's crimes occurred on separate occasions and no aggravating factors warranted consecutive sentences. Cahill also claims that his 225 years to life sentence is an excessive and unconstitutional punishment. Relatedly, Cahill argues that, if these claims were forfeited by defense counsel's failure to object, counsel's failure amounted to constitutionally ineffective assistance. The Attorney General responds by arguing that Cahill's claims were forfeited by the failure to object at trial. In addition, the Attorney

General asserts that Cahill has not demonstrated that his defense counsel performed deficiently or that prejudice resulted from counsel's failure to object.

We conclude that Cahill's claim that the trial court abused its discretion by imposing consecutive sentences was not properly preserved for appellate review. (*Scott, supra,* 9 Cal.4th at p. 356.) In addition, Cahill forfeited his constitutional challenge to his sentence by failing to raise that challenge in the trial court. (*People v. Speight* (2014) 227 Cal.App.4th 1229, 1247; see also *People v. Kelley* (1997) 52 Cal.App.4th 568, 583 (*Kelley*); *People v. Norman* (2003) 109 Cal.App.4th 221, 229.) Accordingly, we do not address the merits of Cahill's claims for relief from his sentence.

As for Cahill's ineffective assistance of counsel claim, he must establish both that his counsel's performance was deficient and that he suffered prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 (*Strickland*).) Cahill bears the burden of demonstrating by a preponderance of the evidence that his counsel's performance fell below an objective standard of reasonableness. (*In re Thomas* (2006) 37 Cal.4th 1249, 1257.) "It is particularly difficult to prevail on an *appellate* claim of ineffective assistance. On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) To satisfy the prejudice element of his ineffectiveness claim, Cahill must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been more favorable to [him], i.e., a probability sufficient to undermine confidence in the outcome." (*In re Ross* (1995) 10 Cal.4th 184, 201.)

As noted above, at Cahill's sentencing, defense counsel argued for a stay of the sentences on counts 1 through 4 under section 654. In addition, defense counsel asked

the trial court to impose the minimum restitution fine because of Cahill's indigency. On the record before us, we cannot say that defense counsel's failure to object to the imposition of consecutive sentences amounted to ineffective assistance. Rule 4.425 of the California Rules of Court "sets forth the criteria affecting the decision to impose consecutive rather than concurrent terms." (*People v. Coelho* (2001) 89 Cal.App.4th 861, 886.) The factors relating to the crimes include whether "(1) The crimes and their objectives were predominantly independent of each other; (2) The crimes involved separate acts of violence or threats of violence; or (3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior." (Cal. Rules of Court, rule 4.425(a).) The court may also consider any circumstances in aggravation or mitigation when deciding whether to impose consecutive sentences. (Cal. Rules of Court, rule 4.425(b).) Only a single factor is required to impose consecutive terms. (*People v. Davis* (1995) 10 Cal.4th 463, 552; *People v. King* (2010) 183 Cal.App.4th 1281, 1323.)

When imposing Cahill's sentences consecutively, the trial court said, "it is my intention to order consecutive sentencing for separate crimes on separate occasions as described in the probation report." The court noted the aggravating circumstances in the case: "[Cahill's] acts involved cruelty, the victims were particularly vulnerable due to their age, and the fact that [Cahill] is a grandfather, took advantage, unspeakable advantage, of his position of trust taken during the offenses." In terms of relevant mitigating factors, the probation report noted only Cahill's lack of criminal history. Of this factor, the trial court stated, "The fact that there is a single mitigating factor that he managed to get this long in his life [without criminal convictions] to me is not mitigating." The court concluded that the aggravating factors outweighed any mitigating ones.

The trial record supported the court's findings. Cahill committed multiple sex crimes over an extended period. The evidence was overwhelming that Cahill molested his own granddaughters, one whom he was tutoring because of her learning disability and the other whom he was babysitting because her mother (his own daughter) was suffering from cancer. Cahill molested his granddaughters repeatedly over a period of months when they were alone with him; he instructed Jane Doe #1 not to tell anyone; he gave candy and money to Jane Doe #2; and he told Jane Doe #2's parents that she had a bad attitude, presumably to undercut her credibility if she disclosed his abuse. The aggravating circumstances here overwhelmingly outweighed the mitigating fact that Cahill had no prior criminal history.

The trial court thus appropriately exercised its discretion to impose consecutive sentences, and we cannot say that there is no satisfactory explanation for defense counsel's failure to object to the consecutive sentencing. (See *People v. Price* (1991) 1 Cal.4th 324, 387 (*Price*) ["Counsel does not render ineffective assistance by failing to make motions or objections that counsel reasonably determines would be futile."].)

Moreover, Cahill cannot demonstrate a reasonable probability that, if his counsel had objected, the trial court would have exercised its discretion differently and imposed concurrent sentences. (See *People v. Giminez* (1975) 14 Cal.3d 68, 72 ["in the absence of a clear showing that its sentencing decision was arbitrary or irrational, a trial court should be presumed to have acted to achieve legitimate sentencing objectives"].) It is difficult to imagine that any trial court would have imposed concurrent sentences for the crimes Cahill perpetrated on his granddaughters, and the trial court did impose a concurrent sentence for the possession of child pornography—the only charge that did not involve victimization of Jane Doe #1 or Jane Doe #2.

We also reject Cahill's ineffective assistance claim as to the constitutionality of his sentence. Both the federal and state Constitutions proscribe cruel and unusual punishment by prohibiting a sentence that is disproportionate to the severity of the

offense.[16] (U.S. Const., 8th Amend.; Cal. Const., art. I, § 17; *Harmelin v. Michigan* (1991) 501 U.S. 957, 1001 (conc. opn. of Kennedy, J.); *People v. Marshall* (1990) 50 Cal.3d 907, 938.) "Successful challenges based on proportionality are extremely rare." (*Kelley*, *supra*, 52 Cal.App.4th at p. 583; see *Lockyer v. Andrade* (2003) 538 U.S. 63, 73.) "The Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." (*Harmelin*, *supra*, at p. 1001 (conc. opn. of Kennedy, J.).) Under this standard, the United States Supreme Court upheld a mandatory sentence of life without the possibility of parole for possession of 672 grams of cocaine. (*Id*. at pp. 990–995 (lead opn. of Scalia, J.).) And in *Ewing v. California* (2003) 538 U.S. 11, the Supreme Court held that a "sentence of 25 years to life in prison, imposed for the offense of felony grand theft under the three strikes law, is not grossly disproportionate and therefore does not violate the Eighth Amendment's prohibition on cruel and unusual punishments." (*Id*. at pp. 30-31.)

Under the California Constitution, a sentence violates the prohibition against cruel or unusual punishment if " 'it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.' " (*People v. Dillon* (1983) 34 Cal.3d 441, 478, quoting *In re Lynch* (1972) 8 Cal.3d 410, 424.) The three factors for determining if a punishment is cruel or unusual are (1) the nature of the offense and the offender with regard to the degree of danger both present to society, (2) a comparison of the punishment with the punishments prescribed for more serious crimes in the jurisdiction, and (3) a comparison of the punishment with punishments for the same offense in other jurisdictions. (*Lynch*, *supra*, at pp. 425–427.)

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[16] We note that Cahill did not clearly articulate in his briefs an argument that his sentence violates the state constitutional prohibition against cruel or unusual punishment. Nevertheless, because Cahill cited state court cases that address the state constitutional protection and the Attorney General argued that Cahill's sentence did not violate the state constitution, we will address the federal and state constitutional protections.

The first factor weighs heavily against Cahill here. His crimes were many and egregious. (See *People v. Baker* (2018) 20 Cal.App.5th 711, 724–725 (*Baker*).) The second and third factors also do not compel a conclusion that Cahill's sentence violates the state Constitution. California courts have repeatedly upheld lengthy prison sentences as constitutional in similar circumstances. (See, e.g., *People v. Andrade* (2015) 238 Cal.App.4th 1274, 1309–1310 [195 years to life, comprised of 13 consecutive terms of 15 years to life, for sex crimes against five victims]; *People v. Retanan* (2007) 154 Cal.App.4th 1219, 1230–1231 (*Retanan*) [135 years to life for 16 felony sex crimes against four young girls]; *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1132–1137 [53 years plus an indeterminate term of 375 years for multiple crimes, including sex crimes, on three victims]; *People v. Wallace* (1993) 14 Cal.App.4th 651, 666-667 [283 years for 46 sex crimes against seven victims]; *People v. Huber* (1986) 181 Cal.App.3d 601, 633–635 (*Huber*) [106 years for multiple violent sex offenses against five victims]; *People v. Bestelmeyer* (1985) 166 Cal.App.3d 520, 532 (*Bestelmeyer*) [129 years for 25 sex crimes against one victim].)

Cahill contends that his age makes the sentence imposed "the functional equivalent of life without the possibility of parole." But this fact does not render his sentence unconstitutional. Courts have upheld life sentences for similar crimes. (See, e.g., *Baker*, *supra*, 20 Cal.App.5th at p. 733 [rejecting contention that indeterminate life sentence imposed on a defendant with a minimal criminal history for three acts of sexual abuse violates the Eighth Amendment]; *Bestelmeyer*, *supra*, 166 Cal.App.3d at p. 531 [rejecting defendant's argument that his sentence was unconstitutional because "129 years is tantamount to a sentence of life without possibility of parole since the defendant would not become eligible for parole until he has served at least one half of that sentence"]; *Retanan*, *supra*, 154 Cal.App.4th at p. 1230 [rejecting defendant's challenge to his 135 years to life sentence, which was "substantially longer than his possible life span"]; *Huber*, *supra*, 181 Cal.App.3d at p. 634 [rejecting defendant's argument that "his

sentence is the functional equivalent of life without possibility of parole in that he will not be eligible for parole until he is about 85 years old"].)

As with Cahill's challenge to the trial court's discretionary imposition of consecutive sentences, we cannot conclude that defense counsel's failure to object to the sentence on constitutional grounds lacks any satisfactory explanation. (See *Price, supra,* 1 Cal.4th at p. 387.) Furthermore, Cahill cannot show prejudice because his underlying claim lacks merit. (See *Strickland*, *supra*, 466 U.S. at p. 694.)

III. DISPOSITION

The judgment is affirmed.

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DANNER, J.

WE CONCUR:

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GREENWOOD, P.J.

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BAMATTRE-MANOUKIAN, J.

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